IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Babu Lal & Others vs. Gopi Lal & Others.

S.B.Civil First Appeal No.70/1985 under Section 96 C.P.C. against the judgment and decree dated 01.03.1985 passed by Shri Budhmal Bhojak RHJS, Additional District Judge Baran in Civil Suit No.24/1981.

Date of Judgment :::::: April 19, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.Rinesh Gupta for appellants.

BY THE COURT (ORAL):-

The facts relevant for the disposal of the appeal in brief are that plaintiff-appellants filed a suit for specific performance with regard to the agricultural land bearing Khasra No.229 measuring 16 bighas situated in village Sevanya. The land was said to be in possession of the plaintiffs. It was mentioned in the plaint that on

6.2.1980, defendant respondents Gopi Lal and Kishan Lal executed an agreement to sale the land for a consideration of Rs.18,000/- and they accepted the money. They also affixed their thumb impressions on the document and that defendant respondents Ram Chandra and Mathura Lal had no objection against the alleged agreement to sale the land. It was mentioned in the plaint that the defendants assured to get the sale-deed registered later on but they did not do so and avoided registration of sale deed. Accordingly, on 1.9.1981 the plaintiffs sent a registered letter to the defendants, which was not replied by them. It was then mentioned that on 10.10.1981, defendants came at the field and quarreled with the plaintiffs. Ultimately, the plaintiffs had no option but to file the suit claiming two relief (i) the defendants be directed to get the sale deed registered or (ii) the defendants be directed to refund the amount with interest.

In the written statement, the defendants while admitting relationship between the parties have categorically denied execution of an agreement to sale the land either on 26.2.1980 or on any date. The also denied the averment as to the handing over of possession of land. They also denied possession of the plaintiffs over the land in question. In the additional plea it was mentioned that

before 10 years, the land in dispute was mortgaged with the plaintiffs. As the period of mortgage had expired, the defendants filed an application before the SDM, Chhabra for delivery of possession of the land. As per the case of the defendants, the suit was filed as a counter to the application filed by the defendants. It was also mentioned that the land is under the joint khatedari and no partition took place amongst the khatedars. Therefore, defendants 1 and 2 had no right to sell the land of joint khatedari and because of this reason, the alleged agreement to sale is illegal, null and void being contrary to law. The defendants therefore, prayed for dismissal of the suit with cost of Rs.1000/-.

On basis of the pleadings of the parties, the learned trial court framed as many as five issues.

In support of their case, the plaintiffs examined three witnesses namely; PW.1 Babu Lal, PW.2 Jamna Lal and PW.3 Bhanwar Lal and also produced some documents while from the side of the defendants Gopi Lal was examined as D.W.1.

At the conclusion of trial of the suit the learned trial court dismissed the suit on the ground that the

plaintiffs have not been able to prove execution of agreement to sale, payment of Rs.18,000/- and consent of defendants Ram Chandra and Mathura Lal to sell the land.

Feeling aggrieved of the impugned judgment and decree, dismissing the suit, the plaintiffs have filed the present appeal.

Heard learned counsel for the appellants.

Learned counsel for the plaintiff appellants contended that the learned trial court has wrongly appreciated the evidence of the plaintiffs and thus, has committed illegality in dismissing plaintiffs' suit.

After hearing learned counsel for the appellants, I have gone through the impugned judgment as well as the material and evidence available on record.

The only question which requires to be adjudicated upon is whether the defendant Nos.1 and 2 agreed to sell the agricultural land mentioned in para No.2 of the suit for a consideration of Rs.18,000/- and executed an agreement to sale on 6.2.80 and had handed over possession of the land to the plaintiffs.

The case of the plaintiffs is that on 6.2.1980, the defendants 1 and 2 agreed to sale 16 bighas of land to the plaintiffs after receiving Rs.18,000/-. However, it is not clear from the averments of the plaint as to when this amount was received by defendant Nos.1 and 2. It is also not clear whether the defendants Nos.1 and 2 admitted to have received Rs.18,000/- on 6.2.1980 itself or that they accepted to have received the said sum as an outstanding. In Ex.1 Rs.18000/- has been shown as out standing of some old debt. It is written in Ex.1 that there were some money transactions between the parties, which came to be finally settled and Rs.24,000/- (Rs.18,000/- as principal and Rs.6,000/- as interest) were found due. However, it is not clear from Ex.1 as to when, how and on the basis of which document this amount was paid to the defendants. This document certainly mentions about some outstanding on the basis of some document/accounts. But it is not clear from Ex.1 as to what was the kind of that document, what is the date and how much is the amount. Thus, no conclusion can at all be drawn from Ex.1.

PW.1 Babu Lal in his statement has admitted that money transaction between him and the defendants was going on since one and half years prior to the execution of the

document Ex.1. According to him, an amount of Rs.24,000/- was outstanding towards the defendants (Rs.18000/- as principal sum and Rs.6,000/- interest). From the statement of this witness, it is not clear that from when the amount of Rs.18,000/- was outstanding towards the defendants. It appears from the statement this witness that he has taken two pleas and both, in my view, are contradictory to each other. At one hand he states that the amount was given on 6.2.1980 and on the other hand he states that the amount was out standing towards old debt. PW.2 Jamna Lal in his statement has stated that Rs.18,000/- as principal sum and Rs.6,000/- as interest became due towards the defendants and all the four defendants assured to get registry of 16 bighas of land in Baisakh but this witness has changed his statement and deposed that the amount became due towards Gopi Lal and Kishan Lal and the other share holders of the land refused to sign the document. PW.3 Bhanwar Lal in his statement has stated that Gopi Lal sold his field measuring 16 bighas to Babu Lal and Ram Karan. As per the statement of this witness the deal was finalised at Rs.18,000/-. In his cross-examination, this witness has denied the fact that the accounts were settled in his presence. He also denied the fact of payment of Rs.24,000/- in his presence.

From the evidence of the plaintiffs and their

witnesses it is clear that the plaintiffs have not been able to prove that they paid the amount of Rs.18,000/-, as a consideration of the agreement to sale. It is also important to mention here that despite asking by the defendants, to produce before the court the original Bahi and diary regarding entry of the loan amount, the plaintiff failed to produce the same on the pretext that the same were damaged. Evidently, the plaintiffs have failed to prove that Ex.1 was validly entered into between the parties and on the basis of which relief can be granted to the plaintiffs.

So far as the possession of the land in question is concerned, from the evidence of the parties it is clear that possession of the land in dispute was with the plaintiffs in view of the mortgage prior to execution of Ex.1 and, therefore, it cannot be said that any possession of the land was handed over to the plaintiffs by virtue of Ex.1.

The conclusion of the discussions above would be that the plaintiffs have failed to prove issue No.1 in accordance with law. The learned trial court, therefore, has committed no error in recording finding on issue No.1 against the plaintiffs and consequently dismissing the

plaint, so as to require any interference by this Court.

For the discussions above, the first appeal filed by the plaintiff-appellants fails and is, hereby dismissed with no orders as to costs.

(K.C.Sharma),J.

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